



SENATOR RUNNER'S WEEK IN REVIEW

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Sexually Violent Predators

A recent series of articles featured in the *Sacramento Bee* has sparked consideration of ways by which California might bolster its containment of our worst sexual offenders. Persons determined to be sexually violent predators (SVP) may be civilly committed to a state hospital for treatment upon the completion of criminal incarceration. Unfortunately, as the *Bee*'s reporting has highlighted, there are serious loopholes and deficiencies in the law that must be corrected to ensure that these offenders are kept away from society as long as they are a threat.

History

As described in the recent articles: "The program was launched in 1996 in response to public anger surrounding the release of Melvin Carter, the 'College Terrace Rapist,' from prison. Carter was convicted of 23 felonies and confessed to more than 100 rapes on Bay Area campuses and in areas of Stockton and Davis. Carter was set to be paroled to Alameda County, but in the heat of Gov. Pete Wilson's re-election campaign, state officials instead sent him to remote Modoc County, where he lived on the grounds of a prison camp on U.S. Forest Service land. He later was escorted to San Francisco International Airport and placed on a flight headed out of state, and authorities refused to divulge where he went. The uproar over his case led the Legislature to approve a plan allowing California authorities to detain the highest-risk sex offenders even after they complete their prison sentences." The result was the SVP law, which was enacted by SB 1143 (Mountjoy, Chapter 762) and AB 888 (Rogan, Chapter 763) in 1995.

Commitment Process

The SVP commitment process is limited to persons in custody serving a determinate term or on a parole revocation. Whenever the Director of Corrections determines that an individual may be an SVP because of the person's criminal history, the director is required, at least six months prior to that individual's scheduled date for release from prison, to refer the person for SVP evaluation. If both of the required evaluators agree that the person has a diagnosed mental disorder that makes him or her likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of the Department of Mental Health (DMH) is required to forward a request for a

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petition for involuntary civil commitment to the county of conviction. If one of the evaluators concurs that the person meets SVP criteria, but the other does not, independent evaluators must do two additional evaluations. After the filing of a petition of commitment, the court then determines if there is probable cause supporting the SVP finding. If there is probable cause, a trial is held with the standard being proof beyond reasonable doubt.

If the defendant is found to be an SVP, he is committed to a secure facility operated by the DMH for two years of treatment. An SVP committed to the custody of the DMH is required to have a current examination of his or her mental condition at least once every year. The law allows for unlimited subsequent petitions seeking the continuation of commitment, with each successful petition carrying an additional commitment interval lasting two years. However, if the court or jury rules for the committed person, he or she shall be unconditionally released. Also, the Director of DMH or an SVP may petition for conditional release. In such a case, the court is required to hold a hearing to determine whether the SVP would be a danger to the health and safety of others, in that it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if discharged into the community. If that is not found to be the case, the court is required to order the committed person placed with an appropriate forensic conditional release program operated by the state for one year.

The Problems

Since the program started, over 6,300 persons have been referred to DMH for evaluation and 538 have been adjudged to be SVPs. According to the Sacramento Bee, 58 have been released, but only four of those 58 were released pursuant to the conditional release program. The vast majority have been released without further supervision or sanction. The reason for this disparity is that SVPs have figured out that refusing treatment and taking their chances with the biennial re-commitment process to petition for release may be an easier ticket out.

Also troubling, the list of offenses that trigger the SVP process ("sexually violent offenses") has some glaring omissions, including forcible assault with intent to commit a sex crime and forcible continuous sexual abuse of a child. What may be more offensive though, is the fact that the law requires, in order to make the SVP determination, that a person has been convicted of a sexually violent offense against two or more victims.

The Solutions

Republican legislators have consistently offered legislative attempts to strengthen the SVP law, but those efforts have consistently been rebuked. Despite the fact that we are only halfway through the legislative session, no fewer than five measures aimed at remedying the problems listed above have met severe resistance or outright failure.

Assemblywoman Sharon Runner and I introduced California's version of Jessica's Law (SB 588 and AB 231, respectively) which among its many provisions to strengthen California's sex offender laws, it will fix these huge problems in the SVP program by requiring indeterminate terms for SVPs and allowing for a sexually violent predator determination after one victim instead of the current law that requires there must be two victims. The bills were killed in the Legislature, but voters will have an opportunity to pass Jessica's Law this year.

Other efforts included Senator Poochigian's legislation, SB 864 and SB 865. The former, which initially proposed an indeterminate SVP commitment, was later narrowed to extend the commitment period from two years to four years. SB 864 failed passage in the Assembly Public Safety Committee. SB 865 attempted to include assault with intent to commit a sex crime and

continuous sexual abuse of a child in the list of sexually violent offenses, but that bill died in the Senate Public Safety Committee. Also last year, Senator Hollingsworth introduced SB 1098, which would have allowed for an SVP determination after only one victim, if that victim was under the age of 14. That bill also died in Senate Public Safety.

Conclusion

If public safety is our goal, we must ensure that SVPs are kept away from society as long as they remain a threat. With a commitment period of two years, prosecutors and the DMH are constantly making the case for additional commitments when they know that most SVPs are not ready for release. By requiring an indeterminate commitment, it would eliminate the current loopholes that are only these sexually violent predators to roam free and undetected in our communities.

Also, we should not wait until an offender has multiple victims to impose SVP status. Requiring only one victim will allow prosecutors and correctional officials to take steps early in an offender's career to end his criminal ways. We also must close the loopholes that exist in the offense list so that technicalities in the law do not allow a potential SVP be free to strike again.

It is past time for the Legislature to act. We need to toughen our sex offender laws in order to keep our communities safe.

**If you would like to contact Senator Runner, please click
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